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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 504

JOSEPH F. SCHIPANI,

Petitioner,

—v—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF DENIAL OF CERTIORARI

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Petitioner, Joseph F. Schipani, respectfully prays for a rehearing of the order of November 7, 1966 denying his petition for certiorari.

By order of December 5, 1966 the time for filing this petition for rehearing was extended to and including Thursday, December 8, 1966.

The circumstance which occasions the filing of this petition for rehearing is that, after certiorari had been denied on November 7, 1966 as aforesaid, the Solicitor General filed a supplemental memorandum for the United States suggesting "that the Court vacate its order denying certiorari, grant certiorari, vacate the judgment of the court of appeals, and remand the cause to the district court for a new trial should the government seek to prosecute petitioner anew".

The Solicitor General's supplemental memorandum recites, in essence, that under the standards of *Black* v. *United*

States, October Term 1965, no. 1029, decided *per curiam* November 7, 1966, the prosecution and conviction of petitioner Schipani (on charges of income tax evasion) were improper because of certain electronic eavesdropping by Government officers. The Solicitor General states (Suppl. Mem., pp. 3-4):

> "• • • Since there was material evidence against petitioner which was tainted, his conviction cannot stand, and no purpose would be served here in having the district court conduct a collateral hearing, such as was suggested by the government in its memorandum in *Black.*"

Petitioner therefore respectfully joins in the Solicitor General's suggestions above quoted that certiorari be granted and that the judgment of the Court of Appeals be vacated.

Without intending to show ingratitude for the Solicitor General's statesmanlike and honorable action in filing his supplemental memorandum in this case, we would respectfully make one further suggestion as to the proper disposition to be made in the light of the Solicitor General's memorandum. We respectfully suggest that, instead of remanding the case to the district court for a new trial, the Court may wish to consider ordering dismissal of the indictment. We realize that the Solicitor General's memorandum does not contain information pointing expressly to the use of tainted evidence before the grand jury, and that this Court has apparently not yet spoken finally on the question of the consequences of the use of unconstitutionally tainted evidence before a Federal grand jury (compare *Coppedge* v. *United States,* 369 U.S. 438, 453-454, with *Costello* v. *United States,* 350 U.S. 359). We press this suggestion as to dis-

missal of the indictment only in the event that the Government might be in a position to state that tainted evidence was used before the Grand Jury which indicted petitioner Schipani.

CONCLUSION

It is respectfully prayed that this petition for rehearing be granted, that the Court vacate its order of November 7, 1966 denying certiorari, grant certiorari, vacate or reverse the judgment of the Court of Appeals, and remand with directions to vacate the judgment of conviction and to dismiss the indictment.

Respectfully submitted,

JACOB P. LEFKOWITZ
Attorney for Petitioner
Joseph F. Schipani

December 6, 1966

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that the petition is restricted to the grounds specified in Rule 58(2).

JACOB P. LEFKOWITZ
Attorney for Petitioner
Joseph F. Schipani